

0097-163

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
 )  
Petition for Commission Assumption )  
of Jurisdiction of Low Tech Designs, Inc.'s )  
Petition for Arbitration with Ameritech Illinois )  
Before the Illinois Commerce Commission )

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**PETITION FOR COMMISSION ASSUMPTION OF JURISDICTION**

Low Tech Designs, Inc. ("LTD") submits this petition for Commission assumption of jurisdiction of arbitration pursuant to Section 252(e)(5) of the Telecommunications Act of 1996 ("the Act"). LTD contends that the Illinois Commerce Commission ("ICC") has failed to fulfill its duty to arbitrate failed negotiations between LTD and Illinois Bell Telephone Company d/b/a Ameritech Illinois ("Ameritech") under Section 252(b) of the Act. LTD seeks FCC assumption of ICC jurisdiction of LTD's arbitration with Ameritech.

**STANDING AND BACKGROUND**

1. LTD is a new entrant requesting telecommunications carrier attempting to enter the local telecommunications services market. LTD has stated its intention, to all parties, to offer resold local exchange services and new telecommunication services using unbundled network elements. LTD considers itself to be a telecommunications carrier as defined and anticipated by Sections 3(49) and 252(a)(1) of the Act respectively, and applicable FCC rules and interpretations

2. After the August 8, 1996 release of the FCC's "First Report and Order" (FCC 96-325) implementing the local competition provisions of the Act, LTD became aware of the duty of incumbent LEC's (ILEC's) to negotiate in good faith, under Sections 251(b) and (c) of the Act, with a requesting telecommunications carrier, prior to the carrier first obtaining state certifications (see 47 CFR 51.301(c)(5)). LTD viewed

this ILEC duty as supporting LTD's legal basis for entering into negotiations with Ameritech under the Act. In the opinion of LTD, this duty also provides a cornerstone for LTD's legal basis to obtain arbitration of failed negotiations before the ICC, if necessary, prior to obtaining State certification in any jurisdiction and prior to actually offering telecommunications services directly to the public for a fee.

3. LTD initiated formal negotiations with Ameritech via a letter on August 23, 1996. Ameritech acknowledged LTD's request on August 27, 1996. At the time it initiated negotiations with Ameritech, LTD was a new entrant telecommunications carrier not certificated in Illinois.

4. On or about January 30, 1997, after unproductive negotiations with Ameritech characterized by their general failure to negotiate in good faith, LTD filed a timely "Petition for Arbitration" ("Petition") with Ameritech before the ICC. The case was assigned Docket No. 97-AB-001.

5. On March 31, 1997, the ICC issued an "Arbitration Decision" ("Decision") denying LTD's Petition, stating that LTD did not meet the threshold requirement that it be a telecommunications carrier under the 1996 Act, and was therefore not entitled to arbitration with Ameritech (Decision at pg. 5). The ICC's Decision<sup>1</sup> expected LTD to show that it was already actively offering telecommunications services somewhere in the United States (Decision at pg. 4 and 5) before it could consider itself to be a telecommunications carrier. The ICC did not consider certification by the ICC, or a state commission, to be a prerequisite for arbitration (Decision at pg. 2). It should be noted that the ICC separately refused to consider, and allowed to be struck from the record, extensive LTD evidence showing Ameritech's failure to negotiate in good faith.

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<sup>1</sup> This Decision was actually a result of Ameritech's "Motion to Dismiss the Petition", issued on February 24, 1997, and not the result of any actual arbitrations conducted by the ICC.

## ARGUMENT

6. LTD has always maintained that entities entitled to negotiate with incumbent LEC's under the Act should have the right to arbitrate with the incumbent LEC if negotiations were not fruitful<sup>2</sup>.

7. Since arbitrations under the Act are a legal consequence of a failure to obtain an interconnection agreement under voluntary negotiations, LTD believes that any state rules or rulings denying arbitration to a new entrant that has been in negotiations with an ILEC are in violation of Section 253(a) of the Act. Without an arbitrated agreement, a new entrant, such as LTD, is not able to take one of the first necessary steps towards offering its intended services. This has the effect of prohibiting "any entity", such as an uncertificated new entrant telecommunications carrier, the ability to offer telecommunications services, in violation of Section 253(a) of the Act.

8. The ICC's legal reasoning for denying LTD's Petition is flawed. The ICC acknowledges that LTD's lack of certification in Illinois is not dispositive of the case before them, and concedes that there is no requirement under the 1996 Act that an entity requesting arbitration be certified by a state commission. However, the ICC then goes on to contradict itself by establishing a threshold requirement that LTD must at least be actively providing telecommunications services in another state (and by consequence, be certified in that state, which it says it doesn't require) before it will consider LTD to be a telecommunications carrier under the Act. If a new entrant, such

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<sup>2</sup> See, in this order, Paras. 12, 32, 1402, 1401, 341, and 1336 of the FCC's "First Report and Order" (FCC 96-325) released August 8, 1996, for a logical analysis of the entry path, from negotiation to arbitration, for small new entrant telecommunications carriers. Also, see "Joint Explanatory State of the Committee on Conference", H.R. Rep. No. 458, 104th Cong., 2d Sess., Jan. 31, 1996, where, in discussing Section 251, it states "The conferees note that the duties imposed under new section 251(b) make sense only in the context of a specific request from another telecommunications carrier or any other person who actually seeks to connect with or provide services using the LEC's network". Congress clearly considered requests from existing telecommunications carriers and any other person to be equivalent for purposes of Section 251(b) duties, and also by reference in the Act, ILEC duties under Section 251(c).

as LTD, must be offering services before arbitrating, then new entrants would never be allowed into the market. This legal requirement is in violation of Section 253(a) of the Act in that it has the effect of prohibiting LTD from providing intrastate telecommunications services.

9. LTD also argued before the ICC that Para. 992 of the FCC's First Report and Order states:

"We conclude that to the extent a carrier<sup>3</sup> is engaged in [or has commenced, taking part or occupying itself in a venture with the purpose of] providing for a fee domestic or international telecommunications, directly to the public. . . , the carrier falls within the definition of "telecommunications carrier." (emphasis added)

LTD considers the key word in this definition to be the word "engaged", meaning "to commence or take part in a venture, to occupy oneself in an undertaking" (Funk and Wagnalls Standard College Dictionary, Text Ed., 1963, 66). This interpretation allows for the inclusion of new entrant requesting (telecommunications) carriers, such as LTD, that have engaged ILEC's in negotiations for the purposes of directly offering public telecommunications for a fee. Any other reading would make folly of the Act and its pro-competitive intent.

### **CONCLUSION AND PRAYER**

10. LTD respectfully requests that this Commission assume jurisdiction of the arbitration between LTD and Ameritech, as authorized in Section 252(e)(5) of the Act, since the ICC has failed to arbitrate differences between the parties as required as part of their Section 252 responsibilities under the Act.

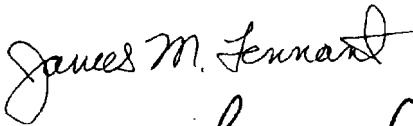
LTD's initial new telecommunications service proposes to utilize unbundled network elements associated with call related databases for the purposes of providing a least cost routing service for long distance calls, available without presubscription and accessed by using an abbreviated dialing code. This proposed service, while

<sup>3</sup> It should be noted that the term "carrier" is not defined in the Communications Act of 1934 as amended.

extremely consumer friendly, has been and will be violently opposed by both ILEC's seeking entry into the long distance market and existing long distance carriers. LTD has already seen what it considers to be a failure to negotiate in good faith on the behalf of ILEC's, and a general tendency to mis-characterize the nature of the service to block LTD's ability to offer it to consumers.

LTD believes that FCC assumption of the arbitration will facilitate the introduction of this old - but new to residential and small businesses - telecommunications service, with favorable implications on long distance rates paid by these consumers. Additionally, it is LTD's desire to see this arbitration combined with other arbitrations denied to LTD by State Commissions in Georgia and South Carolina with BellSouth and GTE South respectively. These assumption petitions have been filed separately for Commission consideration.

Respectfully submitted,



Date: July 9, 1997



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**Affidavit**

State South Carolina  
County Georgetown

I hereby certify that Mr. James Martin Tennant, President of Low Tech Designs, Inc., 1204 Saville St., Georgetown, SC, 29440, appeared before me, this 9TH day of July, 1997, and attested to the validity and true account of the attached PETITION FOR COMMISSION ASSUMPTION OF JURISDICTION.

Mr. Tennant has affirmed to me that he is the author of the attached document and that the facts contained within are true and based on verifiable records of the negotiations and subsequent legal actions of Low Tech Designs, Inc., Illinois Bell Telephone Company d/b/a Ameritech Illinois, and the Illinois Commerce Commission.

Notary Public:

PUBLIC

Jane M. Green  
Com. Exp 3-24-98

Attest:

James M. Tennant  
James M. Tennant

Date: 7/9/97

CERTIFICATE OF  
SERVICE

I hereby certify that I have this day served one copy of the foregoing PETITION FOR COMMISSION ASSUMPTION OF JURISDICTION, by depositing same in the United States mail in a properly addressed envelope with adequate postage thereon to insure delivery to the following parties:

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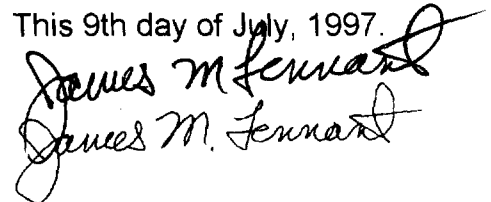
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An original and four copies were delivered, in the same manner, to:

William Caton  
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This 9th day of July, 1997.



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